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MI

FILE:

Office: VERMONT SERVICE CENTER

Date: JUL 29 2005

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director denied the application because the applicant failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant submitted the following documentation along with his initial TPS application:

1. An affidavit from [REDACTED] in which she stated that she was the applicant's cousin and that he has lived in the United States at her house in Bay Shore, New York since July of 1997.

On August 18, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

2. A copy of an affidavit from [REDACTED] in which she stated that the applicant was her cousin, that he has lived in the United States at her house in Bay Shore, New York, and that she knows he entered the United States in January of 2000 and has not departed since.

On February 11, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. A copy of an affidavit from [REDACTED] which she stated that the applicant was her cousin and that he has lived in the United States at her house in [REDACTED] since January of 2001; and,
4. A copy of Form W-2 for the year 2001 listing the employer as American Pallet Recycling LLC, and bearing the name [REDACTED] as employee.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 29, 2004. The director noted that the first statement made by [REDACTED] differed from her second statement in that initially she stated that the applicant came to the United States in 1997, and in her second statement stated that the applicant came to the United States in January of 2001. The director also noted that the Form W-2 for the tax year 2001 did not indicate when the applicant began his employment in the United States.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

5. A letter of employment from the president and CEO of American Pallet Recycling LLC in which he states that the applicant has been employed at his company since 1997;
6. A copy of Form W-2 for the tax year 2001 listing the employer as American Pallet Recycling LLC, and bearing the name [REDACTED] as employee; and,
7. A copy of Form W-2 for the tax year 2002 listing the employer as American Pallet Recycling LLC, and bearing the name [REDACTED] as the employee.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The employment letter from American Pallet Recycling LLC has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form, does not specify the applicant's exact dates of employment, does not indicate the type of work performed by the applicant, and does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant indicated that his company had employed the applicant since 1997, but the applicant stated in his TPS application that he did not enter the United States until September of 2000.

The applicant submitted three affidavits from [REDACTED] (Nos. 1, 2, and 3 above). In the first affidavit the affiant stated that the applicant has been in the United States since July of 1997. In the second affidavit she stated that the applicant has been in the United States since January of 2000. And, in a third affidavit the affiant stated that the applicant has been in the United States since January of 2001. There has been no justification given for these grave inconsistencies. The evidence as submitted is unreliable and cannot be used to determine the applicant's TPS eligibility. Further, without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

The applicant initially submitted a copy of a Form W-2 for the year 2001 bearing the name [REDACTED] with employee number [REDACTED]. On appeal the applicant submits a copy of a Form W-2 for the year 2001

bearing the name [REDACTED] with the same employee number, [REDACTED]. The photocopied Form W-2 detailed in No. 6 above appears to have been altered as the original employee name seems to have been covered-over and the applicant's name has been inserted in its place. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the document in No. 6 above. Therefore, the reliability of the evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.